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Final Report
of the

JOINT SELECT COMMITTEE
TO IMPLEMENT A PROGRAM
FOR THE CONTROL, CARE AND TREATMENT OF
SEXUALLY VIOLENT PREDATORS

October 15, 1998

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EXECUTIVE SUMMARY

The Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators was created by the 118th Maine Legislature through Joint Order, House Paper 1653. The Committee's charge was to develop a plan for the control, care and treatment of sexually violent predators and report that plan to the Joint Standing Committee on Judiciary by October 15, 1998.

The Committee met in May, June, July and September of 1998. The members consulted with the Department of Corrections, the Department of the Attorney General and the Department of Mental Health, Mental Retardation and Substance Abuse Services, as well as other agencies, attorneys and members of the public. The Committee wishes to acknowledge the significant contributions of Dr. Joseph Fitzpatrick of the Department of Mental Health, Mental Retardation and Substance Abuse Services and Assistant Attorney General Charles K. Leadbetter of the Department of the Attorney General.

The Committee voted to recommend that the Legislature not adopt a civil commitment process for sexual predators as was originally proposed in LD 1807. The Committee voted to recommend that the Legislature amend the Criminal Code to provide longer sentences of imprisonment and longer periods of probation and to create supervised release to provide supervision of sex offenders whose terms of imprisonment have expired. Some members of the Committee support even stronger criminal penalties, such as imposing a life sentence for a person who is convicted of a second gross sexual assault.

The Committee makes the following specific legislative recommendations:

- Define "dangerous sexual offender" to be a person who has committed a gross sexual assault after having already been convicted and sentenced for a serious sexual assault.
- Increase the maximum term of imprisonment to "any term of years" for dangerous sexual offenders.
- Increase the maximum period of probation to "any term of years" for dangerous sexual offenders.
- Provide for supervised release to be imposed after a straight term of imprisonment expires.
- Allow the court to revoke probation if, during the initial unsuspended portion of the term of imprisonment, a dangerous sexual offender refuses to actively participate in a sex offender treatment program, in accordance with the expectations and judgment of the treatment providers, when requested to do so by the Department of Corrections.
- Allow the court to impose a period of supervised release after a term of imprisonment for a person convicted of gross sexual assault.

The Committee makes the following additional recommendations:

- Increase the number of forensic and presentence evaluations of sex offenders.

- Create a separate line item in the Judicial Department's budget for sex offender evaluations and provide adequate funding for the performance of appropriate evaluations.
- Require that all forensic evaluations ordered by the court be provided to the department of Corrections.
- Accelerate availability of sex offender treatment programs provided by the Department of Corrections, including a variety of treatment modes with a focus on behavior management.

I. Introduction

A. Study Creation and Charge

The Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators was created pursuant to Joint Order, House Paper 1653, during the Second Special Session of the 118th Legislature. The Committee's charge was to develop a plan to implement a program to provide for the control, care and treatment of sexually violent predators that included at least the following:

- a description of proposed facilities;
- appropriate treatment modalities;
- personnel requirements;
- legal and practical procedures for using the program;
- estimated population of sexually violent predators who would be eligible to participate in the program; and
- costs and funding estimates.

The Joint Select Committee consisted of 13 legislators, each of whom serve on the Joint Standing Committee on Criminal Justice, the Joint Standing Committee on Judiciary or are interested in developing a program for the control, care and treatment of sexually violent predators.

B. Process

The Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators met four times. In completing its work, the Committee consulted with the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Department of Corrections; and the Department of Attorney General. The Committee also heard comments from several judges and clinicians who work with sex offenders in the private sector and reviewed other states' and countries' programs and laws dealing with sexually violent predators.

After hearing testimony, studying the issues surrounding civil commitment and discussing the legislative charge at length, the Committee decided not to recommend civil commitment of sexually violent predators. Instead the Committee recommends identifying the "dangerous sexual offender" and increasing terms of imprisonment, increasing periods of probation and imposing supervised release at the expiration of a straight term of imprisonment for the dangerous sexual offender. (See **III. Recommendations** for further discussion.)

II. Background

A. Current Maine Law and Resources

The Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators reviewed the Maine statutes that may be used to prosecute and sentence sex offenders. The Committee found that prosecutors and the courts currently have many options to exercise in prosecuting and sentencing sex offenders. Because the Criminal Code was carefully crafted and provides these numerous options for prosecuting and sentencing sex offenders, the Committee determined that working within the framework of this body of law, with a few amendments specific to the small but very dangerous group of sexual offenders, is the best way to address the problem of sexually violent predators.

The statutes that the Committee reviewed and that the criminal justice system uses for sex offenders may be found in the Criminal Code, the child abuse laws, the Sex Offender Registration Act and the Sex Offender Registration and Notification Act. The following summarizes these statutes.

1. Criminal Code (Title 17-A Maine Revised Statutes Annotated): Sex Offenses
The following "felony" sex offenses (Class A, B or C crimes) are found in the Criminal Code:

A. Gross sexual assault, Title 17-A, §253 may be a Class A, B or C crime;

B. Sexual abuse of a minor, Title 17-A, §254, sub-§3, ¶¶A and B may be a Class C crime; and

C. Unlawful sexual contact, Title 17-A, §255, sub-§1, ¶¶C, G and H are Class C crimes.

In addition, other crimes in the Code may be used to prosecute sex offenders. Under certain circumstances, a sex offender may be charged with:

A. Aggravated assault, Title 17-A, §208, which is a Class B crime; and

B. Elevated aggravated assault, Title 17-A, §208-B, which is a Class A crime.

The following crimes regarding child abuse are found in Title 17 and may also be used to prosecute sex offenders:

A. Sexual exploitation of a minor, Title 17, §2922, which may be a Class A or B crime;

B. Dissemination of sexually explicit materials, Title 17, §2923, which may be a Class B or C crime; and

C. Possession of sexually explicit materials, Title 17, §2924, sub-§5, which may be a Class C crime.

2. Sentencing alternatives

Sentencing alternatives for sex offenders most often include incarceration as the central tool. The variety of sentencing options that exist include:

A. A straight term of imprisonment;

B. A split sentence (a term of imprisonment and a period of probation);

C. A wholly suspended term of imprisonment with a period of probation; and

D. A split sentence with a period of intensive supervision (ISP). (Although ISP currently is not funded and therefore not used, the Committee discussed the positive aspects of intensive supervision and the role it or a similar program might play in the long-term supervision of sex offenders. See **III. Recommendations** for further discussion regarding supervised release of sex offenders.)

The following terms of imprisonment may be prescribed for each class of crime:

A. For a Class A crime: a term not to exceed 40 years;

B. For a Class B crime: a term not to exceed 10 years;

C. For a Class C crime: a term not to exceed 5 years;

D. For a Class D crime: a term of less than 1 year; and

E. For a Class E crime: a term not to exceed 6 months.

The following periods of probation may be prescribed for each class of crime:

A. For a Class A crime: a period not to exceed 6 years;

B. For a Class B crime: a period not to exceed 4 years;

C. For a Class C crime: a period not to exceed 4 years;

D. For a Class D crime: a period not to exceed 1 year; and

E. For a Class E crime: a period not to exceed 1 year.

In addition to the periods of probation that may be imposed above, the court may extend the period of probation for a person convicted of a sex offense under Title 17-A, Chapter 11 (Sexual Assaults) if the court finds that the additional time is necessary to provide treatment or to protect the public because the court, using factors aiding in predicting high-risk sex offenders for sentencing purposes (Title 17-A, section 257), determines that the person is a high-risk sex offender. The extended periods of probation that the court may order are as follows:

A. Four more years for a person convicted of a Class A crime (for a total of 10 years);

B. Two more years for a person convicted of a Class B or C crime (for a total of 6 years); and

C. One more year for a person convicted of a Class D or E crime (for a total of 2 years).

As part of a sentence, the court also orders every person convicted as a "sex offender" under the Sex Offender Registration and Notification Act, Title 34-A, section 11103, to satisfy all sex offender registration requirements.

Depending upon the case, sentences may also be enhanced by certain factors that the court may or must consider. In addition to the enhancement of sentences for Class A, B and C crimes, other "misdemeanor" sex offenses (Class D and E crimes) may be enhanced (and therefore become "felonies") by two factors:

A. Using a dangerous weapon in the commission of a crime. If a dangerous weapon is used in the commission of a crime, the sentencing class for the crime is one class higher than it would otherwise be (see Title 17-A §1252, sub-§4); or

B. Being a recidivist. If the State pleads and proves that at the time any crime, except murder, under chapter 9, 11, 13 or 27 of the Criminal Code was committed, the defendant had been convicted of 2 or more crimes under these chapters or substantially similar crimes in other jurisdictions, the sentencing class for the crime is one class higher than it would otherwise be (see Title 17-A §1252, sub-§4-A).

Additionally, in the case of murder or attempted murder, if the court finds the crime was accompanied by sexual abuse, torture or other extreme cruelty inflicted on the victim, a life sentence of imprisonment may be imposed. The minimum term of imprisonment for murder is 25 years, the maximum is life. The maximum term of imprisonment for a Class A crime was increased from 20 years to 40 years in 1989. To sentence a person to imprisonment for more than 20 years for a Class A crime, the court may consider a serious criminal history of the defendant and impose a maximum period of incarceration

in excess of 20 years based upon either the nature and seriousness of the crime alone or on the nature and seriousness of the crime together with the serious criminal history of the defendant.

The Committee determined that amending the criminal statutes to deal with sex offenders is more practical and more effective than any form of civil commitment. The Committee considered the option of relying almost solely on a thorough psychological evaluation of a convicted offender to determine the appropriate sentence. Such an approach puts the clinician in the awkward position of making a very difficult determination that someone is a "sexually violent predator" and conveying that message to the court, who in turn sentences the offender to some form of potentially permanent custody. Basing the sentencing and potential treatment upon the offender's prior behavior, rather than upon a diagnosis of a personality disorder or mental abnormality, eliminates that complex and perhaps inappropriate role for the clinician. The variety of options the current statutes provide, coupled with proposed specific amendments to those statutes, is the best approach to dealing with the problems posed by very dangerous sex offenders.

3. Sex Offender Registration Act (Title 34-A); Sex Offender Registration and Notification Act (Title 34-A)

Currently, there are 2 acts relating to the registration of sex offenders and public notification regarding the release of sex offenders: the Sex Offender Registration Act and the Sex Offender Registration and Notification Act. For purposes of these acts, "sex offender" covers only those who commit gross sexual assault against victims under 16 years of age. The first act, the Sex Offender Registration Act, Title 34-A, chapter 11 applies to sex offenders sentenced on or after June 30, 1992 and before September 1, 1996. The second act, the Sex Offender Registration and Notification Act, Title 34-A, chapter 13 applies to sex offenders sentenced or placed in institutional confinement on or after September 1, 1996. The following table compares the Acts.

	Sex Offender Registration Act	Sex Offender Registration and Notification Act
Application	On or after June 30, 1992 and before September 1, 1996	On or after September 1, 1996
Sex Offender Definition	Individual convicted of gross sexual assault if the victim had not attained the age of 16 years at the time of the crime	Individual convicted of gross sexual assault if the victim had not attained the age of 16 years at the time of the crime or an individual found not criminally responsible for committing gross sexual assault by reason of mental disease or defect if the victim had not attained the age of 16 years at the time of the crime
Duty to Register	Offender registers address with Department of Public Safety, State Bureau of Identification (SBI) within 15 days after discharge from incarceration or within 15 days of sentencing; must notify SBI within 5 days of moving	Offender registers address with SBI within 15 days after discharge from incarceration or within 5 days of sentencing; must notify SBI at least 5 days before moving

Duration of Registration	15 years	15 years (if violation of probation occurs, 15 years begins again upon release)
Waiver	Offender can seek waiver after 5 years and may then do so annually; waiver granted if : • conviction vacated; • pardon granted; • Superior Court waives requirement after finding reasonable likelihood registration no longer necessary; or • sentencing court waives for good cause	Offender can seek waiver after 5 years and may then do so annually; waiver granted if : • conviction vacated; • pardon granted; • Superior Court waives requirement after finding reasonable likelihood registration no longer necessary; or • sentencing court waives for good cause
Violation	Failure to register or update as required is a Class E crime	Failure to register or update as required is a Class D crime, except a violation when the offender has 2 or more prior convictions is a Class C crime
Duties of State Bureau of Identification (SBI)		Upon receiving notice of an offender's release, address or change in address, SBI notifies all law enforcement agencies having jurisdiction in the municipality where a sex offender registers an address
Risk Assessment by Department of Corrections (DOC)		DOC-created risk assessment instrument to be used to evaluate supervision needs of each sex offender released on probation and for the purpose of determining notification procedures
Notification Process		• DOC notifies SBI of the following when sex offender conditionally released or discharged: (address where offender will live and work, geographic area to which conditional release limited, status of sex offender when released as determined by risk assessment instrument, offender's risk assessment score, a copy of the risk assessment instrument and applicable contact standards for the offender) • DPS notifies all law enforcement agencies that have jurisdiction in those areas where the offender resides or works • Local law enforcement agencies notify whoever they determine appropriate to ensure public safety

4. Enhanced community supervision

In addition to the registration and notification requirements for sex offenders, six new probation officers were hired in October 1997 to manage only probationers whose cases involved serious sex crimes. The six probation officers were hired pursuant to Byrne Grant funding. After completing training, the six officers began managing their caseloads in February 1998. Their duties include maintaining a minimum number of required contacts with the probationers based upon the level of risk at which the probationers have been assessed for purposes of release. All of the cases are classified as either "maximum" or "high" risk for purposes of contact standards. The probation officer must have at least six contacts with the following requirements per month with a probationer classified as a maximum risk:

A. Two contacts must be in the probationer's home;

B. Two contacts must be in person but outside the probationer's home; and

C. Two contacts must be collateral, which may include the probationer's therapist, work supervisor, or residence/neighborhood contact.

The probation officer must have at least four contacts per month with the following requirements with a probationer classified as a high risk:

A. At least one contact must be in the probationer's home;

B. At least one contact must be with the probationer's therapist;

C. At least one contact must be with the probationer's work supervisor every 2 months.

The six specialized probation officers may have contact with their probationers and others who work and live with the probationers more regularly than the mandatory contacts, and their work includes helping to manage probationers' behavior and identify issues that may increase the likelihood of a probationer reoffending. Unfortunately, the number of probationers who have committed sex crimes is greater than the combined maximum caseload of the 6 specialized probation officers. Some of the high risk probationers are managed as part of the very large caseloads of other probation officers. The specialized probation officers are working to help train the other probation officers in helping to manage behavior and identify risk factors for reoffending.

The Committee recognized that these probation officers are an integral part of the effective behavior management of sex offenders, and expanding the role of probation officers in the long-term supervision of sex offenders is one method of addressing risk management and helping to ensure public safety. Providing adequate funding and personnel to ensure the appropriate level of supervision for sex offenders after their term

of imprisonment is necessary to implement the proposed expansion of sentencing alternatives for sex offenders.

5. Current and Planned Resources

In addition to the sentencing alternatives for sex offenders, the Judiciary also has the discretion to request forensic evaluations of sex offenders. Information gathered from forensic evaluations is used in the sentencing process. Although this is a very useful tool for both the Judiciary and the Department of Corrections, the judicial budget is allowed only $40,000 per year for this purpose. The Committee recognized the great importance of presentence information and believes that the Judiciary should have adequate resources in order to ensure that the necessary presentence information is gathered in appropriate cases.

The Department of Corrections estimates that an average of 300 persons are convicted as sex offenders per year and that currently the State Forensic Service contracts with private clinicians for most forensic evaluations. The average time required to perform such evaluations is 11.5 hours per case but has varied anywhere from 3.5 to 34.5 hours. For the last 10 years the State Forensic Service has capped payment allowed at a maximum of $75 per hour and 10 hours per case. The State Forensic Service recommends increasing from $75 to $100 the amount paid to clinicians and providing a new line item in the Judiciary's budget that would allow for adequate resources to perform necessary forensic evaluations. In order to provide screening evaluations for all persons convicted of sex offenses, the State Forensic Service would need approximately $360,000 per year. The estimated cost for a comprehensive sex offender assessment program, including evaluations for the presence of psychopathic personalities, for all convicted sex offenders is $416,000. (See memo from State Forensic Service at **Appendix D.**)

In addition to forensic evaluations, sex offender treatment that focuses on behavior management techniques is needed. Currently, the Department of Corrections provides no programs for sex offenders. The Department of Corrections anticipates that, as part of Phase I of its Capital Plan to restructure the entire corrections system, programming elements for sex offenders will be implemented at the Windham facility three years from now.

B. How other states address sexual predators

The problem of how to deal with sexually violent offenders is not new. The Committee, like other states, struggled with how to effectively address the problems of dealing with the most dangerous sex offenders. The Committee discovered that over the years two basic approaches have arisen regarding this issue: Sexual predation is caused by a condition best treated within the mental health field; and sexually violent offenders are criminals and therefore should be dealt with within the criminal justice system. Most states that have addressed the issue have used

some combination of the two approaches, while leaning toward either the mental health model or the criminal model. A description of some other states' approaches follows.

1. Civil commitment

At least ten states have enacted civil commitment laws as a method of dealing with sexually violent predators (Arizona, California, Florida, Illinois, Iowa, Kansas, Minnesota, New Jersey, Washington and Wisconsin). Involuntary commitment of a convicted sexually violent offender is accomplished through a separate civil proceeding before the offender's term of imprisonment has expired. The purpose is to keep the predator away from vulnerable populations as long as he or she is dangerous -- potentially for life. The person is not released after the criminal sentence is served, but only after the person is determined not to present an unacceptable risk of reoffending.

After conviction and sometime before release at the expiration of a sentence of imprisonment (states vary as to how long before scheduled release), the prison administrator or the prosecuting attorney decides that the person meets the definition of a "sexually violent predator" (or comparable term) as detailed in statute. Generally, a judge determines whether there is probable cause to believe the person meets that definition. If a subsequent jury determination is in agreement, the person is committed to a facility that provides care, control and treatment in a secure setting. Facilities may be operated by mental health departments, yet housed on corrections department grounds. The person has the opportunity to petition for release or conditional release, and the operators of the facility may also petition for the person's release or conditional release as the person's situation warrants. A judge makes the determination that it is appropriate to release the person, and under what conditions. There is a distinct possibility that release will never be approved. Most of the civil commitment laws also provide for the civil commitment of a person whose term of imprisonment has already expired, if that person has committed an "overt act" that indicates they create a serious risk to the public.

The first civil commitment law made its way to the U.S. Supreme Court last year in the case Kansas v. Hendricks, 117 S.Ct. 2072 (1997). The Kansas Sexual Predator Act was challenged on constitutional grounds by a convicted sex offender who was involuntarily committed at the end of his sentence. Although the Supreme Court upheld the Kansas law by a vote of 5-4, finding no substantive due process, double jeopardy or *ex post facto* infirmities, there are a number of serious legal, practical and logistical concerns raised by the civil commitment process. The Committee identified the following problems that make civil commitment an unworkable process for Maine.

- The difficulty defining "sexually violent predator" for purposes of civil commitment. There are few tools to accomplish this with great scientific accuracy.

- The requirement that clinicians determine whether or not a person is a "sexually violent predator," the conveyance of that message to the court and

the potential for the court to then place the offender in some type of permanent custody.

- The difficulty identifying the proper model for a civil commitment facility and treatment program.

- The difficulty identifying a proper method to civilly commit an offender and implementing the process.

- The inefficacy of the civil commitment process.

- The huge costs associated with civilly committing someone in a mental health facility.

- The myriad of legal questions that arise regarding an offender's constitutional rights that involve due process, double jeopardy or *ex post facto* applications.

2. Criminal laws

Some states have chosen to address the handling of sexually violent predators through their criminal laws. These take the form of "two-strikes" or "three-strikes" laws or enhanced sentencing, including lifetime probation or lifetime supervision..

As of the end of 1997, 24 states had three strikes-type laws The central theme is to get tough with repeat felony offenders. The State of Washington led the way in 1993 with its voter-initiated "three strikes you're out" law for habitual offenders: the Persistent Felony Offender Act requires life without the possibility of parole for third-time serious felony offenders. Other states do not mandate life without parole in all cases, but increase the maximum sentence a judge may impose. Ten states have added a "two-strikes" provision -- conviction for a narrower class of felonies with only one prior conviction also results in longer, if not lifetime, sentences.

States with two-, three- or four-strikes laws are: Arkansas; California; Colorado; Connecticut; Florida; Georgia; Indiana; Kansas; Louisiana; Maryland; Montana; Nevada; New Jersey; New Mexico; North Carolina; North Dakota; Pennsylvania; South Carolina; Tennessee; Utah; Vermont; Virginia; Washington; and Wisconsin.

Yet another approach is to provide some type of supervision for the life of the sexually violent predator once he or she is no longer incarcerated. Four states currently have such provisions on the books.

Colorado. Enacted this year and effective November 1, 1998, the new Colorado law establishes lifetime supervision of sex offenders. The law includes a "legislative declaration" that the majority of persons who commit sex offenses, if incarcerated or supervised without treatment, will continue to present a danger to the public when released from incarceration and supervision. The declaration also

mentions the unacceptably high cost, in both state dollars and loss of human potential, to provide lifetime incarceration. The new law authorizes the district court, in consideration of an evaluation and other factors, to sentence a sex offender to probation for an indeterminate period of at least 10 years and a maximum of the sex offender's life. A condition of the probation is that the sex offender participate in the intensive supervision probation program for sex offenders established in the new law. Violation may result in revocation of probation. Release from intensive supervision probation is based in part on whether the sex offender has successfully progressed in treatment.

Nevada. The Nevada law directs the court to include in the sentence, in addition to any other penalties, a special sentence of lifetime supervision for a defendant convicted of a sexual offense. The special sentence begins after any period of probation or any term of imprisonment and period of release on parole. The person sentenced to lifetime supervision may petition the court for release, which must be granted if: (1) The person has not been convicted of an offense that poses a threat to the safety or well-being of others for at least 15 years; and (2) The person is not likely to pose a threat to the safety of others if released.

Tennessee. Tennessee requires that persons convicted of certain sex offenses be given a sentence of community supervision for life. The sentence begins at the expiration of the term of imprisonment or upon release from regular parole supervision. The Board of Parole may establish on an individual basis conditions that are necessary to protect the public from the person committing a new offense as well as promoting the rehabilitation of the person. The Board may also establish a supervision and rehabilitation fee. The person may petition the Board for release after 15 years. A knowing violation of a condition of community supervision, if it is not already a crime, is a Class A misdemeanor. If the conduct in violation of the conditions is a crime, the violation is either a Class A misdemeanor or a Class E felony, depending on the severity of the crime.

Utah. The Utah law requires sex offenders convicted of first degree felonies to complete lifetime parole outside of confinement and without violation unless the Board or Pardons and Parole terminates the period. Conditions of parole may include outpatient mental health counseling and treatment. Violation of the conditions may subject the person to return to incarceration for the remainder of the sentenced imprisonment.

III. RECOMMENDATIONS

After reviewing the laws of Maine and other states, the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators makes the following recommendations.

- Amend the Criminal Code. (See proposed legislation at **Appendix C.**) Because the Committee recognized that prior intervention of the criminal justice system has failed to deter the sex offender and because the offender's own repetitive criminal behavior currently serves as the most accurate indicator of future dangerousness, we recommend amending sentencing options so that they are consistent with the "just deserts" philosophy of the Criminal Code and serve primarily to enhance public safety through restraint and post-release management. Proposed amendments do the following:

  - ✦ Define the small but very threatening group of sex offenders that exists as "dangerous sexual offenders." A dangerous sexual offender is an offender who commits a new gross sexual assault after having been previously convicted and sentenced for a serious sexual assault;

  - ✦ Remove the ceiling for terms of imprisonment for dangerous sexual offenders, which allows the court to impose a straight term of imprisonment or a split term of imprisonment for "any term of years;"

  - ✦ Remove the ceiling for periods of probation for dangerous sexual offenders, which allows the court to impose a period of probation for "any term of years;"

  - ✦ Create a post-release supervision program for offenders who receive a straight sentence. A term of supervised release of "any term of years" may be imposed at the time of imposing a straight term of imprisonment to ensure that the offender is closely monitored once back in the community. Sanctions and conditions for post-release supervision operate as sanctions and conditions for probation do;

  - ✦ Allow the court to revoke probation if, during the initial unsuspended portion of the term of imprisonment, a dangerous sexual offender refuses to actively participate in a sex offender treatment program, in accordance with the expectations and judgment of the treatment providers, when requested to do so by the Department of Corrections. Supervised release may be revoked by the court before the completion of a straight term of imprisonment; and

  - ✦ Allow the court to impose a period of supervised release after a term of imprisonment for a person convicted of gross sexual assault under Title 17-A, section 253.

- ✧ In addition to these legislative recommendations, some members of the Committee support even stronger penalties -- such as potential life sentences for persons who fall into the category of sexual predators.

- Increase the number of forensic and presentence evaluations for sex offenders. The Committee recognizes the great importance of presentence information and believes that the Judiciary should have adequate resources in order to ensure that the necessary presentence information is gathered in appropriate cases;

- Create a separate line item in the Judicial Department's budget for sex offender evaluations, and provide adequate funding for the performance of appropriate evaluations. The Committee agrees with the State Forensic Service's recommendation that the hourly rate for clinicians performing forensic evaluations be increased from $75 to $100. In order to provide screening evaluations for all persons convicted of sex offenses, the State Forensic Service would need approximately $360,000 per year. The estimated cost for a comprehensive sex offender assessment program, including evaluations for the presence of psychopathic personalities, for all convicted sex offenders is $416,000 (See memo from State Forensic Service at **Appendix D**);

- Require that all forensic evaluations ordered by the court be provided to the Department of Corrections (see Justice Kravchuk's letter, see **Appendix E**);

- Provide adequate funding and personnel to ensure the appropriate level of supervision for sex offenders on probation and on supervised release. The effectiveness of the proposed expansion of sentencing alternatives for sex offenders is dependent upon this proper allocation of resources; and

- Encourage the Department of Corrections to accelerate the creation of sex offender treatment programs to provide various modes of behavior management for sex offenders in order to support the implementation of the Committee's proposed legislative initiatives. Programming is needed immediately to carry out the purposes of this Committee's report and legislation. The Committee also urges the Department of Corrections in its planning to recognize that the characteristics of sex offenders varies, and therefore, numerous modes of treatment are necessary.

APPENDIX A

JOINT ORDER,
HOUSE PAPER 1653
creating the
JOINT SELECT COMMITTEE TO IMPLEMENT A PROGRAM
FOR THE CONTROL, CARE AND TREATMENT OF SEXUALLY VIOLENT PREDATORS

HP 1653

STATE OF MAINE

In House March 20, 1998

WHEREAS, the Legislature finds there exists an extremely dangerous group of sexually violent predators who have a mental abnormality or personality disorder and who have a significant likelihood to engage in repeat acts of sexual violence unless the State provides an effective intervention mechanism; and

WHEREAS, the Legislature finds that the current criminal justice system inadequately addresses the special needs of sexually violent predators and the risks they present to society; and

WHEREAS, the Legislature finds that there is an urgent need for a program that provides for the control, care and treatment of sexually violent predators; now, therefore, be it

ORDERED, the Senate concurring, that the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators is established as follows.

1. **Committee established.** The Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators, referred to in this order as the "committee," is established.

2. **Membership.** The committee consists of 13 members appointed as follows.

A. The President of the Senate shall appoint 3 members from the Senate who either serve on the Joint Standing Committee on Judiciary or the Joint Standing Committee on Criminal Justice or are interested in developing a program for the control, care and treatment of sexually violent predators. The first Senate member named is the Senate chair.

B. The Speaker of the House of Representatives shall appoint 10 members from the House of Representatives who either serve on the Joint Standing Committee on Judiciary or the Joint Standing Committee on Criminal Justice or are interested in developing a program for the control, care and treatment of sexually violent predators. The first House member named is the House chair.

R. & S.

3. Appointments. All appointments must be made no later than 30 days following the effective date of this order. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the chairs of the committee shall call and convene the first meeting of the committee no later than May 15, 1998.

4. Duties. The committee shall develop a plan to implement a program to provide for the control, care and custody of sexually violent predators. The plan must include at least the following: a description of proposed facilities; appropriate treatment modalities; personnel requirements; legal and practical procedures for using the program; estimated population of sexually violent predators that would be eligible to participate in the program; and costs and funding estimates. In developing the plan, the committee shall:

A. Request the assistance of the Department of Corrections, the Department of Mental Health, Mental Retardation and Substance Abuse Services and other state agencies;

B. Examine programs for the control, care and treatment of sexually violent predators in other jurisdictions;

C. Review legal parameters applicable to such programs;

D. Examine the financial implications of program options;

E. Review the potential sexually violent predator population estimates; and

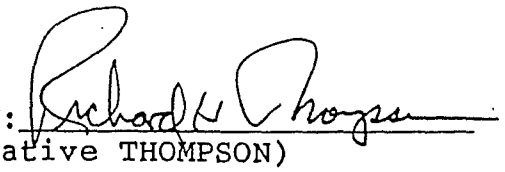
F. Invite the participation of experts and interested parties.

5. Meetings. In conducting its duties, the committee may meet as often as necessary with any individuals, departments or institutions it considers appropriate.

6. Staff assistance. The committee shall request staffing and clerical assistance from the Legislative Council.

7. Reimbursement. Members of the committee are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for travel and other necessary expenses for attendance at meetings of the committee.

8. **Report.** The committee shall submit a report on the plan developed along with any accompanying legislation to the Joint Standing Committee on Judiciary by October 15, 1998. If the committee requires an extension of time to make its report, it may apply to the Legislative Council, which may grant the extension.

SPONSORED BY: 
(Representative THOMPSON)

TOWN: Naples

DATE: March 30, 1998 (Filing No. S-661)

Reproduced and distributed under the direction of the Secretary of the Senate.

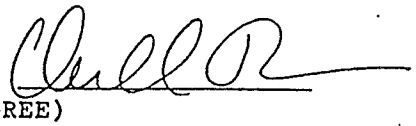
STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to H.P. 1653, "Joint Order Creating the Joint Select Committee to Create a Program for the Control, Care and Treatment of Sexually Violent Predators"

Amend the order in section 5 in the 2nd line (page 2) by striking out the following: "as often as necessary with" and inserting in its place the following: 'up to 4 times, as authorized by the presiding officers. During these meetings, the committee may meet with'

SUMMARY

This amendment limits the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators to up to 4 meetings, as authorized by the presiding officers.

SPONSORED BY: 
(Senator PINGREE)

COUNTY: Knox

SENATE AMENDMENT

HOUSE OF REPRESENTATIVES
March 20,1998

READ AND PASSED. SENT UP FOR CONCURRENCE. ORDERED SENT FORTHWITH ORDERED SENT FORTHWITH

CLERK

IN THE SENATE CHAMBER
March 23,1998

READ AND ON MOTION BY SENATOR RAND OF CUMBERLAND TABLED PENDING PASSAGE. LATER TODAY ASSIGNED

SECRETARY OF THE SENATE

IN THE SENATE CHAMBER
March 23,1998

UNFINISHED BUSINESS

SECRETARY OF THE SENATE

IN THE SENATE CHAMBER
March 31,1998

TAKEN FROM THE TABLE BY THE PRESIDENT ON MOTION BY SENATOR PINGREE OF KNOX SENATE AMENDMENT "A" (S-661) ADOPTED. PASSED AS AMENDED BY SENATE AMENDMENT "A" (S-661) IN NON-CONCURRENCE. SENT DOWN FOR CONCURRENCE

SECRETARY OF THE SENATE

APPENDIX B

Members

MEMBERS

Appointments by the President

Senator Robert E. Murray, Jr., **Chair**
340 Center Street
Bangor, Maine 04001

Senator Lloyd LaFountain III
322 Alfred Street
Biddeford, Maine 04005

Senator Betty Lou Mitchell
PO Box 6
Etna, Maine 04434

Appointments by the Speaker

Representative Richard Thompson, **Chair**
Route 11
PO Box 711
Naples, Maine 04055

Representative George Bunker
Rt., Box 35
Topsfield, Maine 04490

Representative Michael J. McAlevey
West Road
PO Box 340
Waterboro, Maine 04087

Representative G. Paul Waterhouse
21 Green Street
Bridgton, Maine 04009

Representative David R. Madore
197 Northern Avenue
Augusta, Maine 04330

Representative Edgar Wheeler
West Road
PO Box 207
Bridgewater, Maine 04735

Representative Judith Powers
50 Spring Lane
Rockport, Maine 04856

Representative Wendy Pieh
PO Box 203
Bremen, Maine 04551

Representative Joseph M. Jabar, Sr.
One Center Street
Waterville, Maine 04901

Representative Sharon Libby Jones
Lakeview St.
PO Box 1191
Greenville, Maine 04441

APPENDIX C

Recommended Legislation

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE JOINT SELECT COMMITTEE TO IMPLEMENT A PROGRAM FOR THE CONTROL, CARE AND TREATMENT OF SEXUALLY VIOLENT PREDATORS

118TH MAINE LEGISLATURE
OCTOBER 15, 1998

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §1004 is amended to read:

§ 1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229 or post-conviction review proceedings under sections 2121 to 2132 ~~or~~ , probation revocation proceedings under Title 17-A, sections 1205 to 1207 or supervised release revocation proceedings under Title 17-A, section 1233, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively.

Sec. 2. 17-A MRSA §1201, sub-§1, ¶B, as enacted by PL 1975, c. 740, §109, is amended to read:

B. The statute which the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person shall be sentenced to the imprisonment and required to pay the fine authorized therein; or

Sec. 3. 17-A MRSA §1201, sub-§1, ¶C, as enacted by PL 1975, c. 740, §109, is repealed.

~~C. The court finds that there is an undue risk that during the period of probation the convicted person would commit another crime; or~~

Sec. 4. 17-A MRSA §1202, sub-§1-A is repealed and the following enacted in its place:

1-A. Notwithstanding subsection 1:

A. The period of probation for a person convicted under chapter 11 or section 854, excluding subsection 1, paragraph A, subparagraph (1), may be extended by up to 4 years for a Class A crime, by up to 2 years for a Class B or Class C crime and by up to one year for a Class D or Class E crime if the court finds that the additional time is needed to provide sex-offender treatment to the person or to protect the public from the person because, based on one or more of the factors in section 257, the court determines that the person is a high-risk sex offender; and

B. The period of probation for a person sentenced as a dangerous sexual offender pursuant to section 1252, subsection 4-B is any term of years.

Sec. 5. 17-A MRSA §1203, sub-§1, as amended by PL 195, c. 425, §1, is repealed.

Sec. 6. 17-A MRSA §1203, sub-§1-A is enacted to read:

1-A. The court may sentence a person to a term of imprisonment, not to exceed the maximum term authorized for the crime, an initial portion of which shall be served and the remainder of which shall be suspended. The period of probation commences on the date the person is released from the initial unsuspended portion of the term of imprisonment, unless the court orders it to commence on an earlier date.

A. If the period of probation commences upon release of the person from the initial unsuspended portion of the term of imprisonment, the court may revoke probation for any criminal conduct committed during that initial period of imprisonment.

B. The court may revoke probation if, during the initial unsuspended portion of the term of imprisonment, a person sentenced as a dangerous sexual offender pursuant to section 1252, subsection 4-B, refuses to actively participate in a sex offender treatment program, in accordance with the expectations and judgment of the treatment providers, when requested to do so by the Department of Corrections.

C. As to both the suspended and unsuspended portions of the sentence, the place of imprisonment must be as follows.

(1) For a Class D or Class E crime the court must specify a county jail as the place of imprisonment.

(2) For a Class A, Class B or Class C crime the court must:

(i) Specify a county jail as the place of imprisonment for any portion of the sentence that is 9 months or less; and

(ii) Commit the person to the Department of Corrections for any portion of the sentence that is more than 9 months.

Sec. 7. 17-A MRSA c. 50 is enacted to read:

CHAPTER 50
SUPERVISED RELEASE FOR SEX OFFENDERS

§1231. Inclusion of a period of supervised release after imprisonment

1. The court, in imposing a sentence of a term of imprisonment that does not include probation for a violation of section 253, may include as part of the sentence a requirement that the defendant be placed on a period of supervised release after imprisonment. The period of supervised release commences on the date the person is released from confinement pursuant to section 1254.

2. The authorized period of supervised release is:

A. Any period of years for a person sentenced as a dangerous sexual offender pursuant to section 1252, subsection 4-B; and

B. **For a person not sentenced under section 1252, subsection 4-B, a** period not to exceed 10 years for a Class A violation of section 253 and a period not to exceed 6 years for a Class B or Class C violation of section 253.

3. During the period of supervised release specified in the sentence made pursuant to subsections 1 and 2, and upon application of a person on supervised release or the person's probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on supervised release, modify the requirements imposed by the court, add further requirements authorized by section 1232, or relieve the person on supervised release of any requirement imposed by the court that, in its opinion, imposes on the person an unreasonable burden.

Notwithstanding this subsection, the court may grant, ex parte, a motion brought by the probation officer to add further requirements if the requirements are immediately necessary to protect the safety of an individual or the public and if all reasonable efforts have been made to give written

or oral notice to the person on supervised release. Any requirements added pursuant to an ex parte motion do not take effect until written notice of the requirements, along with written notice of the scheduled date, time and place when the court will hold a hearing on the added requirements, is given to the person on supervised release.

4. On application of the probation officer, or of the person on supervised release, or on its own motion, the court may terminate a period of supervised release and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsections 1 and 2, if warranted by the conduct of such person. A termination and discharge may not be ordered upon the motion of the person on supervised release unless notice of the motion is given to the probation officer by the person on supervised release. Termination and discharge relieves the person on supervised release of any obligations imposed by the sentence of supervised release.

5. Any justice, in order to comply with section 1256, subsection 8, may terminate a period of supervised release that would delay commencement of a consecutive unsuspended term of imprisonment. Any judge may also do so if that judge has jurisdiction over each of the sentences involved.

6. The court may revoke a period of supervised release pursuant to section 1233. If the court revokes a period of supervised release, the court may require the person to serve time in prison under the custody of the Department of Corrections. This time in prison may equal all or part of the period of supervised release, without credit for time served on post release supervision, but may not exceed 1/3 of the straight term of imprisonment imposed.

§1232. Conditions of supervised release

If the court imposes a sentence that includes a period of supervised release, it shall set conditions of supervised release. The conditions of release that apply to probation under section 1204 apply to conditions of supervised release. The court may also set conditions of supervised release that it determines to be reasonable and appropriate to manage the person's behavior.

§1233. Revocation procedures

The procedures, rights and responsibilities that apply to probation revocation under sections 1205 through 1208, including bail under section 1205, subsection 8 and appellate review of revocation under section 1207, apply to revocation of supervised release.

Sec. 8. 17-A MRSA §1252, sub-§4-B is enacted to read:

4-B. If the State pleads and proves that the defendant is a dangerous sexual offender, the court, notwithstanding subsection 2, may set a definite period of imprisonment for any term of years.

A. As used in this section, "dangerous sexual offender" means a person who commits a new gross sexual assault after having been convicted previously and sentenced for any of the following:

(1) Gross sexual assault, formerly denominated as gross sexual misconduct;

(2) Rape;

(3) Attempted murder accompanied by sexual assault;

(4) Murder accompanied by sexual assault; or

(5) Conduct substantially similar to a crime listed in subparagraph (1), (2), (3) or (4) that is a crime under the laws of the United States or any other state.

The date of sentencing is the date of the oral pronouncement of the sentence by the trial court, even if an appeal is taken.

B. "Accompanied by sexual assault" as used with respect to attempted murder, murder and crimes involving substantially similar conduct in other jurisdictions is satisfied if the sentencing court at the time of sentence imposition makes such a finding.

Sec. 9. 17-A MRSA §1256, sub-§8 is amended to read:

8. No court may impose a sentence of imprisonment, not wholly suspended, to be served consecutively to any split sentence, or to any sentence including supervised release under chapter 50, previously imposed or imposed on the same date, if the net result, even with the options made available by subsections 5 and 9 of this section and section 1202, subsection 4, would be to have the person released from physical confinement to be on probation or supervised release for the first sentence and thereafter be required to serve an unsuspended term of imprisonment on the 2nd sentence.

SUMMARY

This bill comprises the unanimous statutory recommendations of the Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators, created by Joint Order, House Paper 1653, 118th Maine Legislature. The complete

recommendations and background information are contained in the Select Committee's Final Report.

This bill makes a number of changes to the current punishment provisions in Part III of the Criminal Code in an effort to allow courts to deal more effectively with the dangerous sexual offender. These changes provide for longer terms of imprisonment, longer periods of probation and the imposition of supervised release when a term of imprisonment expires.

The bill defines what is meant by "dangerous sexual offender." The definition targets those sexual offenders who commit a new gross sexual assault under Title 17-A, section 253 after having been previously convicted and sentenced for a serious sexual assault. Because prior intervention of the criminal justice system has failed to deter the offender and because the offender's own repetitive criminal behavior currently serves as the most accurate indicator of future dangerousness, the new sentencing options are consistent with the "just deserts" philosophy of the Criminal Code and serve primarily to enhance public safety through restraint and post-release management. The bill proposes four changes respecting punishment for the dangerous sexual offender.

First, section 8 removes the current ceiling for terms of imprisonment for the "dangerous sexual offender." A court is authorized to impose a straight term of imprisonment or a split term of imprisonment of "any term of years."

Second, section 4 removes the current probation period caps for the "dangerous sexual offender." A court is authorized to impose a period of probation of "any term of years."

Third, section 7 proposes a new post-release mechanism identified as "supervised release." Supervised release is used in conjunction with the imposition of a straight term of imprisonment and is modeled to some degree upon federal law regarding supervised release (see 18 U.S.C. §3583). A term of supervised release of "any term of years" may be imposed by a court at the time of imposing a straight term of imprisonment. Sanctioning for a violation of a supervised release operates as does sanctioning for a violation of probation. As with probation, the sanction imposed upon revocation is intended to sanction the violator for failing to abide by the court-ordered conditions. Even in the context of new criminal conduct, the violator is sanctioned for the breach of trust, leaving the actual punishment for any new underlying criminal conduct to the court ultimately responsible for imposing punishment for that new crime.

Fourth, the bill amends Title 17-A, section 1203, subsection 1 to allow the court to revoke probation if, during the initial unsuspended portion of the term of imprisonment, a person sentenced as a "dangerous sexual offender" refuses to actively participate in a sex offender treatment program, in accordance with the expectations and judgment of the treatment providers, when requested to do so by the Department of Corrections. By virtue of new Title 17-A, section 1233, supervised release may be revoked by a court before the completion of the straight term of imprisonment.

Finally, the bill also provides for the inclusion of a period of supervised release after imprisonment for any person convicted of a Title 17-A, section 253 offense. Unlike the dangerous sexual offender group, however, the length of the period authorized depends upon the class of the gross sexual assault for which the person is convicted (up to 10 years for a Class A section 253 violation and up to 6 years for a Class B or Class C section 253 violation.) Additionally, as is true of the dangerous sexual offender group, the time of additional imprisonment to serve may equal all or part of the period of supervised release with no credit being given for any time actually served on supervised release, but may not exceed 1/3 of the straight term of imprisonment imposed.

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APPENDIX D

Cost estimates:
Forensic evaluations

STATE OF MAINE
STATE FORENSIC SERVICE
151 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0151

ANGUS S. KING, JR.
GOVERNOR

MELODIE J. PEET
COMMISSIONER

ULRICH B. JACOSSOHN, MD
DIRECTOR

ESTIMATE OF COST FOR PERFORMING COMPREHENSIVE SEX OFFENDER EVALUATIONS ON ALL INDIVIDUALS CONVICTED OF SEX CRIMES

Based on figures provided by the Department of Corrections, it is estimated that at a minimum, there will be around 300 total sex offenders convicted per year. The numbers have fluctuated from 532 (1986) to as low as 282 (1997), with a gradual decrease over the years. The following table illustrates the decline.

1986	532
1987	430
1988	432
1989	442
1990	384
1991	383
1992	355
1993	462
1994	426
1995	350
1996	301
1997	282

Since 1994, the State Forensic Service (SFS) has allowed 10 hours of evaluation time for each case. However, in a recent study of all bills submitted, the average time it has taken our clinicians to perform these evaluations, has been 11.5 hours per case, with the range of averages per clinician of 7 hours to 20 hours. The actual range per case was all the way from 3½ to 34.5 hours. The SFS has gone with the guideline of a cap of 10 hours, regardless of how much time the examination has actually taken. The majority of bills have been for 10 hours.

It appears from these studies that this is an unrealistic. A more appropriate allowable range would be 11.5 hours per case. This is with the understanding that some cases will take less time and would be billed at less time, but that additional time could not be billed for. However, the SFS has had in place a policy that a clinician may request prior approval for more time should the case present as unusually complex and time consuming and these requests have been granted on a case-by-case basis.

The SFS has, for the past 10 years, authorized payment of $75 per hour for the clinician's work. There has been no change in this and the time that clinicians have given to the SFS and the compensation for that time has been far less than what the private

PHONE: (207) 287-7290 (Voice) TTY: (207) 287-2000 FAX: (207) 287-[illegible]

sector normally provides. It is the opinion of the SFS that a $100 per hour payment is probably more consistent with what is currently being charged in the community for forensic work by experienced clinicians, realizing that the private practitioner can charge "whatever the market will bear", ranging all the way from relatively low payment to some very high payments for those clinicians who are particularly prized as evaluators. Reports have been received by the SFS of charges in the range of $250 per hour and even higher. The most frequent charges in Maine that we have been made aware of is around $100 per hour.

In the projected evaluations of sex offenders, the SFS recommends that each and every case include the PCL-SV, a shortened form of the PCL-R that can be utilized to screen for psychopathic personality. This screen, when administered by trained clinicians, should take no more than an additional half hour, bringing the total amount of time for each routine post conviction presentence evaluation to 12 hours.

It is assumed, based on published reports, that some 20% of all convicted sex offenders will score in the psychopathic personality range on the PCL-SV. It is, therefore, recommended that these individuals be administered the PCL-R by the clinician doing the evaluation, adding another hour to the examination. In addition, for quality assurance purposes, any individual given the PCL-R should have a second opinion, utilizing the PCL-R so that each and every case that expresses an opinion that the individual meets the criteria for a finding of psychopathic personality, have two independent PCL-R evaluations. The additional PCL-R would take some 3 hours.

- Taking the above, it is therefore assumed that 300 cases screened per year at 12 hours each at a cost of $100 per hour would total $360,000.00.

- 20% of 300 cases requiring PCL-R testing at 1 hour for the primary examiner and 3 hours for an additional examiner adds 60 cases at $400 for another $24,000.00.

- It is further projected that the additional load on the SFS will require an additional staff person to manage the program. Such a position would be in the range of $32.000 per year.

- **The approximate cost of a Sex Offender Assessment program for all convicted sex offenders to include evaluation for the presence of Psychopathic Personality would be $416,000.00 per year.**

UBJ July 27, 1998

APPENDIX E

Letter and Order re:
Forensic Evaluations

STATE OF MAINE
SUPERIOR COURT

MARGARET J. KRAVCHUK
CHIEF JUSTICE

97 HAMMOND STREET
BANGOR, MAINE 04401
207-947-8606

June 23, 1998

Dr. Ulrich B. Jacobsohn
c/o Lori Day
State Forensic Services
151 State House Station
Augusta ME 04333-0151

Dear Dr. Jacobsohn:

Enclosed is a draft copy of a proposed Forensic Referral Order which would clarify at the time a report is ordered that a copy of the final product should be released to the Department of Corrections. This order would cover all cases, including those wherein the Court has not ordered the formal involvement of the Department in the preparation of a pre-sentence report. I realize that frequently judges may choose to have the attorneys prepare a pre-sentence report in lieu of referrring it to a probation officer. It should be clear that the Department is entitled to have a copy of the Forensic Report in the event that the defendant is ultimately either committed to a correctional facility or placed on probation.

I hope this form will address the issues raised at the June 19th hearing in Augusta. If there are any problems with this please let me know.

Thank you for your help and cooperation.

Sincerely,

Margaret J. Kravchuk
Chief Justice, Superior Court

MJK/pl

c: Dep. Comm. Nancy Bouchard
Sen. Robert Murray, Jr.
Rep. Richard Thompson

STATE OF MAINE

SUPERIOR COURT
_____, ss.
Docket No. _____

DISTRICT COURT
Location _____
Docket No. _____

FORENSIC REFERRAL ORDER

Defendant _____

Date of Birth _____ Phone # _____

Address _____

Offense(s) _____

Plea(s) _____

Reason for Evaluation _____

_____

_____

It is hereby Ordered that the defendant submit to a psychological evaluation to be conducted by (State Forensic) (_____). If the evaluation is to be done by other than State Forensic, indicate method of payment: _____

_____.)

It is further Ordered that the (State Forensic Service) (_____) is directed to provide a copy of the report to the Department of Corrections.

If defendant is incarcerated at the County Jail, the Sheriff's Office is responsible for transportation for purpose of evaluation.

☐ Defendant is in custody at _____

Defendant's attorney: _____
Address: _____
_____
_____
Telephone: _____

(The clerk shall immediately notify the State Forensic Service by telephone of this order. The clerk shall also send a certified copy of this order to the State Forensic Service and a copy of the sentencing scheduling notice. At the close of the case the clerk shall send a copy of the Judgment and Commitment or a copy of the docket entries showing Judgment of Acquittal.)

Date: _____

_____
Judge / Justice

APPENDIX F

Other sources of information

Other sources of information

- "Actuarial Prediction of Sexual Recidivism," Vernon L. Quinsey, Marnie E. Rice, Grant T. Harris, Journal of Interpersonal Violence, March 1995.
- Child Molesters: A Behavioral Analysis for Law-Enforcement Officers Investigating Cases of Child Sexual Exploitation, National Center for Missing and Exploited Children, April 1997.
- Civil Commitment Laws, June 1996, National Conference of State Legislatures.
- "Criminal Justice: Civil Commitment of Sexual Predators," State Trends, Council of State Governments, Summer 1998.
- Kansas v. Hendricks, 117 S.Ct. 2072 (1997).
- "Keeping Sex Offenders Off the Streets," by Dianna Gordon, State Legislatures, March 1998
- LD 1807, An Act to Provide for Commitment of Sexually Violent Predators, 118th Maine Legislature.
- "Psychopathy and Sadistic Personality Disorder," Robert D. Hare, David J. Cooke and Stephen D Hart.
- "Sentencing in Canada," publication of the John Howard Society of Alberta, July 1997.
- Sex Offender Assessment Program Policies and Procedures, State Forensic Service, Maine Department of Mental Health and Mental Retardation, August 1995.
- Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, February 1997.
- Sexual Predator Commitment Laws, Scott Matson and Roxanne Lieb, Washington Institute for Public Policy, October 1997.
- Sexually Violent Predators and Civil Commitment: A Study of the Characteristics and Recidivism of Sex Offenders Considered for Civil Commitment But for Whom Proceedings Were Declined, prepared by Donna Schramm, Ph.D. and Cheryl Darling Malloy, Ph.D., for the Washington State Institute for Public Policy, February 1998.
- "Three strikes legislation update," National Conference of State Legislatures, December 1997.